

County of Los Angeles CHIEF ADMINISTRATIVE OFFICE

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March 9, 2005

To:

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From:

David E. Janssen

Chief Administrative Office

PROPOSED LEGISLATIVE REFORMS OF THE STATE OF CALIFORNIA LABOR CODE 4850 AND DISABILITY RETIREMENT LAWS PERTAINING TO STATE OF CALIFORNIA PUBLIC EMPLOYERS

Background

The County of Los Angeles (County), like twenty other California counties, falls under the County Employees Retirement Law of 1937 (1937 Act) as contained in the State of California Government Code. Applications for County Service Connected Disability Retirement (SCDR) are processed pursuant to Los Angeles County Employees' Retirement Association (LACERA) policies and procedures, subject to the eligibility standards mandated by the 1937 Act. Therefore, the 1937 Act does not allow 1937 Act counties to improve the structure of their disability retirement benefits without amending State of California (California) law.

Labor Code (LC) 4850 provides special benefits to safety personnel due to their hazardous occupations undertaken to protect the public. LC 4850's original intent was to assure that safety personnel were not deterred from the performance of their duties out of fear for loss of earning capacity or promotional opportunity. California first enacted LC 4850 in 1939; however, our Sheriff's Department and Fire Department were not included until 1949 and 1951, respectively.

The SCDR reforms contained herein would apply to all County disability retirements. However, increasing disability retirement expenses for California public employers is most pronounced with safety employees. In Fiscal Year 2003-04, the total cost for County

Each Supervisor March 9, 2005 Page 2

payments to all existing disability retirees exceeded \$380 million; of that total, more than \$262 million, or 69%, was paid to safety retirees. During the period from Fiscal Year 2000-01 through Fiscal Year 2003-04, 54% of the total safety employees retiring from the County were granted a SCDR.

Purpose of Reforms

Reform 1: Require the standard for determination of a Service Connected Disability Retirement to be based upon clear and convincing evidence that county employment is the predominant cause of the disability.

Under the 1937 Act, LACERA must evaluate whether or not a SCDR applicant's work "contributes substantially" to the applicant's incapacity. However, California case law has interpreted "contributes substantially" to mean even a small or very minor degree of employment causation. Reform 1 requires the applicant's county employment to be the predominant cause of the disability.

Reform 2: Encourage cooperative return-to-work efforts, the disability determination for safety members should include assessment of the employee's ability to perform in light duty positions.

Reform 2 strengthens 1937 Act counties' ability to return injured safety employees to non-arduous duty positions <u>should</u> a county desire such a return-to-work standard. The SCDR evaluations would include an assessment of an applicant's ability to perform in any occupational position, not just a specific safety position. Similar disability standards currently apply to the County's Long Term Disability Plan and to the Federal Social Security disability threshold.

Reform 3: Coordinate Service Connected Disability Retirement payments with workers' compensation disability payments paid to eliminate overlapping tax-free benefits.

The County does not offset SCDR payments with workers' compensation payments for the same injury or illness. Both the County's SCDR and workers' compensation programs were established to fairly compensate employees for a work related injury. This reform eliminates a duplicate payment for the same injury or illness.

Reform 4: Limit eligibility for LC 4850 benefits to only those instances where the injury resulted from a sudden, severe, and traumatic event, caused by external violence or physical force, and which arose in the course of performing duties resulting from an identifiable threat to property or safety, or while responding to such a threat.

Each Supervisor March 9, 2005 Page 3

LC 4850 was enacted prior to the tremendous expansion of the California workers' compensation system; for example, the extensive list of injuries or illnesses now presumed to arise from employment (presumptions) did not exist in 1939. Reform 4 helps restore LC 4850's original intent of compensating safety employees suddenly injured in the line of duty.

Reform 5: Reduce the 100% State tax free LC 4850 benefit payments to 75%; and, reduce Service Connected Disability Retirement survivor benefits to the standard 65% from the current 100%, unless the employee is killed in the line of duty, in which case, the survivor benefit would remain 100%.

Injured workers eligible for LC 4850 benefits do not pay California personal income tax. The tax free benefit actually increases an injured worker's take home pay, and creates a financial disincentive to return-to-work. This reform is consistent with the County's other survivor benefit plans and retains the 100% survivor benefit if a safety employee is killed in the line of duty. A survivor benefit of 65% of the safety employee's final compensation would be consistent with the County's MegaFlex Long Term Disability Plan.

Reform 6: Grant California counties the discretion to require an employee's disability retirement when medical evidence exists that the employee is permanently incapacitated from returning to work.

Currently, safety employees become LC 4850 eligible upon the acceptance of a workers' compensation claim. Regardless of the existence of medical evidence that the employee will not return to work, LC 4850 payments are often paid for up to one year. LC 4850 does not allow the County to initiate a SCDR to avoid instances of LC 4850 claims prior to LACERA granting a SCDR.

Reform 7: Eliminate the Service Connected Disability Retirement benefit if the retiree engages in similar work for another public entity.

If a County SCDR retiree can perform similar work for another public agency, the SCDR should be suspended while the County retiree works for that public entity.

Reform 8: Provide that counties or their retirement boards may review the disability status of a retiree up to age 60 rather than only age 55.

In certain cases, LACERA must grant a SCDR to applicants whose medical condition may improve. Currently, LACERA may only reevaluate SCDR retirees up to age 55. SB 105 (Speier) requires, "a recipient of a disability retirement who is less than 59 years of age to undergo a medical examination for the purpose of reevaluating his or her disability." The County's proposed reform would enable LACERA to reevaluate a SCDR retiree up to age 60.

Each Supervisor March 9, 2005 Page 4

Reform 9:

Provide clear language that falsifying medical records, documents, or testimony in order to obtain a Service Connected Disability Retirement is subject to criminal prosecution for fraud and/or perjury.

Reform 9 assures County citizens that fraudulent activity or testimony utilized to obtain a SCDR is unacceptable.

Fiscal Impact

The CAO estimates these reforms would provide the County with annual cost avoidance approximating \$12.5 million.

If you have any questions, please contact Rocky Armfield of my staff at (213) 351-5346.

DEJ:SRH RAA:mtm

c: County Counsel Auditor-Controller Executive Officer, Board of Supervisors